

EXHIBIT 9

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

MDL NO. 1456

THIS DOCUMENT RELATES TO:

TRACK 2 SETTLEMENT

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

**CLASS PLAINTIFFS' MOTION FOR APPROVAL OF FORM OF NOTICE TO
CASH PAYING CONSUMERS IN CLASS 3, APPROVAL OF CONSUMER
CLAIMS SCHEDULE, AND TO RESCHEDULE DATE FOR FINAL
APPROVAL OF THE TRACK TWO SETTLEMENT**

With respect to the Track Two Settlement, Class Plaintiffs submit this motion seeking Court approval of the form of notice to cash paying consumers in Class 3, approval of a revised schedule establishing opt-out, objection and claims filing dates for those cash-payor consumers as well as consumers in Class 1, and to reschedule the date for the final fairness hearing related to the Track Two Settlement, currently scheduled for October 21, 2009. Class Plaintiffs have conferred with the Track Two Defendants and the Track Two Defendants do not oppose this Motion. A proposed form of order is attached hereto for the Court's consideration.

On April 27, 2009, the Court held a fairness hearing to consider approval of the Track Two Settlement. At that time Class Counsel was awaiting data from CMS in order to provide notice to Class 1 of the settlement using CMS contact and payment data. In addition, the Court indicated that it had questions concerning the adequacy of the Class 3 notice as it related to cash payors only. In addition, the Court heard from various objectors to the settlement and sought further clarification on some aspects of the settlement.

Class Counsel intend to file a further response to the Court's comments and concerns raised by objectors prior to the rescheduled final approval hearing. In the meantime, Class Counsel seek to update the Court on the status of notice to Class 1 and seek approval of the supplemental notice to cash payors as well as the form of that notice and to establish a schedule of important dates related to both Class 1 consumers and cash paying consumers in Class 3.

As the Court is aware, notice to Third Party Payors in Class 2 and Class 3 was completed earlier this year and the time for the filing of TPP claims and requests for exclusion passed in March, 2009. The Court-appointed claims administrator is currently auditing and processing TPP claims in the Track Two Settlement. Accordingly, nothing herein relates to an extension or rescheduling of any dates related to TPP claims or requests for exclusion.

A. Notice to Class 1

As the Court will recall, direct mail notice to Class 1 (Medicare recipients) is to be accomplished using data obtained from CMS. This data was previously obtained from CMS and used for purposes of direct mail notice to Class 1 consumers in both the GSK AWP settlement and the Class 1-only settlement with AstraZeneca. Class Counsel have not yet received this data from CMS as it relates to Class 1 consumers with Track Two claims but expect to obtain such data by October 31, 2009. Class Counsel understand that this delay is due to CMS's decision to award its third party data contract to a new vendor. Among other tasks, the vendor manages and fulfills CMS data requests. As part of the transition, the new CMS vendor was required to load all CMS data into its data systems. Due to the amount and complexity of the data maintained by CMS, as related by the vendor, the process has taken far longer than expected. Class Counsel have been informed that the process of loading CMS data is now complete and that the vendor is now processing the request for Class 1 data related to the Track Two Settlement.

B. Approval of Supplemental Notice Program and Form of Notice to Cash Payors

In order to address the Court's concerns that the notice previously published and targeted towards consumers in Class 3 was not clear as to the fact that cash payors are included in the settlement, Class Counsel requested that Katherine Kinsella of Kinsella Media, LLC (previously Kinsella/Novack Communications) design a supplemental notice program to reach cash paying consumers in Class 3. Class Counsel also requested that the supplemental notice program be focused on those forms of notice that are more likely to drive claims among AWP consumer class members.

Given previous experience in a number of settlements in this case, it appears that the greatest number of claims among consumer class members has been driven by both 30 second cable television spots as well as by internet banner ads. This is evidenced by the fact that claims rates in the original notice program spiked considerably in the period of time during which similar cable television spots and banner ads appeared. Thus, the supplemental notice proposed by Kinsella, as outlined on Exhibit 1 attached hereto, focuses exclusively on reaching cash payors through these two forms of media.

1. Cable Television

The proposed supplemental notice program provides for a 30 second television advertisement to be run approximately 60 times during a two-week period. The script of the proposed television ad is attached hereto as Exhibit 2. It is identical to the television spot previously run to reach Class 3 consumers in the Track Two Settlement with the exception that it adds the words "If you paid cash" to the beginning of the television spot. The script will appear on screen as indicated in Exhibit 2 and will also be read aloud by an announcer as the words appear on the screen.

2. Internet Banner Advertisements

As with the original notice program, the supplemental program includes internet banner ads displayed on targeted websites using the 24/7 internet network. This network delivers thousands of impressions daily on hundreds of special interest websites related, including health, travel and other issues of interest to the targeted demographic – consumers who are 35 years of age or older. These banner ads will appear for a period of approximately 6 weeks and will create in excess of 250 million impressions among the visitors to these web pages. The proposed text of the internet banner ad is attached hereto as Exhibit 3.

C. Revised Schedule Related To Consumer Claims Only

In order to provide for the notice to consumer cash payors as well as to provide adequate time to process CMS data and provide consumers in Class 1 direct mail notice, Class Counsel requests that the Court reschedule the final approval hearing currently scheduled for October 21, 2009, and that the Court establish revised deadlines for the filing of requests for exclusion, objections, and claims for Class 1 consumers and cash payors in Class 3. The proposed schedule is set forth below for the Court's consideration:

| <u>Event</u> | <u>Revised Date</u> |
|---|--|
| Filing of Materials in Support of Final Approval including Attorneys Fees | December 1, 2009 |
| Filing of Request for Exclusion | Postmarked by December 15, 2009 |
| Filing of Notice of Intention to Appear at Fairness Hearing Stating Reasons for Opposition to Proposed Settlement | December 15, 2009 |
| Responses to Opposition to Proposed Settlement | January 4, 2010 |
| Final Approval Hearing | _____, 2010 [[TBD by the Court (on or after Jan. 15, 2010)]] |

| | |
|---|------------------|
| Filing of Claim (Consumer Class Members Only) | February 1, 2010 |
|---|------------------|

For the reasons set forth above, Class Counsel respectfully request that the Court approve the manner and form of notice to cash payors and enter the schedule set forth above related to consumers only and that the Court enter the proposed Order filed herewith.

DATED: October 7, 2009.

By /s/ Steve W. Berman
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CLASS COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing, CLASS PLAINTIFFS' MOTION FOR APPROVAL OF FORM OF NOTICE TO CASH PAYING CONSUMERS IN CLASS 3, APPROVAL OF CONSUMER CLAIMS SCHEDULE, AND TO RESCHEDULE DATE FOR FINAL APPROVAL OF THE TRACK TWO SETTLEMENT, to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on October 7, 2009, a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Steve W. Berman

Steve W. Berman

EXHIBIT 1

AWP TRACK II
SUPPLEMENTAL NOTICE OPTIONS - UPDATED TV REACH
OCTOBER 2, 2009

PAID MEDIA PROGRAM ELEMENTS

TARGET AUDIENCE

THE PUBLISHED NOTICE PROGRAM WILL BE MEASURED AGAINST THE FOLLOWING MRI TARGETS:

- ADULTS 35 YEARS OF AGE OR OLDER (ADULTS 35+)
- ADULTS 18 YEARS OF AGE OR OLDER (ADULTS 18+)

MEDIA COMPONENTS

INTERNET

24/7 IS A NETWORK OF WEB SITES THAT DELIVERS IMPRESSIONS TO HUNDREDS OF SPECIFIC INTEREST WEB SITE CHANNELS SUCH AS HEALTH, TRAVEL AND WOMEN'S INTERESTS. THE BANNER ADS ON THE NETWORK ARE USED TO REACH A LARGE PERCENTAGE OF THE TARGET AUDIENCE. IMPRESSIONS BOUGHT ON THE 24/7 NETWORK WILL BE TARGETED TO ADULTS 35+.

| NAME | UNIT | SIZE | TIME FRAME | IMPRESSIONS |
|--------------|---------|--------|------------|-------------|
| 24/7 NETWORK | BANNERS | 728X90 | 6 WEEKS | 261,000,000 |

TELEVISION*

TELEVISION HAS THE ABILITY TO REACH A WIDE NUMBER OF TARGET AUDIENCE MEMBERS WITH AN IMMEDIATE AND INTRUSIVE MESSAGE. THE COMBINATION OF AUDIO AND VISUAL MESSAGE DELIVERY INCREASES THE MESSAGE IMPACT. VIEWERS CAN QUICKLY ASCERTAIN IF THE MESSAGE IS IMPORTANT AND IF SO, DECIDE TO RESPOND. CABLE TELEVISION OFFERS THE OPPORTUNITY TO DIRECT THE MESSAGE AT A MORE TARGETED, NICHE AUDIENCE BY PLACING SPOTS IN PROGRAMMING THAT IS RELEVANT TO THE ADVERTISING MESSAGE. NETWORK TELEVISION ALLOWS THE MESSAGE TO REACH A WIDE SPECTRUM OF POTENTIAL CLASS MEMBERS.

| NAME | UNIT | TIME FRAME | ESTIMATED UNITS |
|-----------------|----------|------------|-----------------|
| CABLE & NETWORK | :30 SPOT | 2 WEEKS | 60 |

PAID MEDIA PROGRAM DELIVERY

| TARGET | ESTIMATED REACH | ESTIMATED FREQUENCY |
|------------|-----------------|---------------------|
| ADULTS 35+ | 55.11% | 3.83 |
| ADULTS 18+ | 42.66% | 3.53 |

EXHIBIT 2

AWP II – Supplemental Notice Television Spot Script



If you paid cash or made percentage co-payments for certain prescription drugs, you could get money back from a class action settlement. A percentage co-payment varies with the price of the drug.

New Words on Screen:

If you paid cash or made percentage co-payments for certain drugs, you could get money back.



Hundreds of drugs for a wide range of conditions such as asthma and cancer are included. Often these drugs are injected in a doctor's office or clinic.



For the list of drugs and claim-filing information, call 877-465-8136 or visit AWPTrack2Settlement.com.

EXHIBIT 3

**If You Paid Cash for Certain Drugs
(or Made a Percentage Co-Payment)**

**Between January 1, 1991
And March 1, 2008**

You May Be Entitled to Money Back

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESAL PRICE
LITIGATION

MDL No. 1456

THIS DOCUMENT RELATES TO:

TRACK 2 SETTLEMENT

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

**[PROPOSED] ORDER REGARDING CLASS PLAINTIFFS' MOTION
FOR APPROVAL OF FORM AND MANNER OF NOTICE TO CASH
PAYING CONSUMERS IN CLASS 3, APPROVAL OF CONSUMER
CLAIMS SCHEDULE, AND TO RESCHEDULE DATE FOR FINAL
APPROVAL OF THE TRACK TWO SETTLEMENT**

The Court, having considered Class Plaintiffs' Motion for Approval of Form and Manner of Notice to Cash Paying Consumers in Class 3, Approval of Consumer Claim Schedule, and to Reschedule date for Final Approval of the Track Two Settlement ("Plaintiffs' Motion"), hereby orders the following:

1. The manner of notice to cash payors as outlined in Exhibit 1 to Plaintiffs' Motion is hereby approved;
2. The form of notice to cash payors as outlined in Exhibits 2 and 3 to Plaintiffs' Motion is hereby approved;
3. The schedule requested in Plaintiffs' Motion, as set forth below, is hereby approved and shall be made available on the Track Two Settlement website within 3 business days of the entry of this Order;

| <u>Event</u> | <u>Revised Date</u> |
|---|--|
| Filing of Materials in Support of Final Approval including Attorneys Fees | December 1, 2009 |
| Filing of Request for Exclusion | Postmarked by December 15, 2009 |
| Filing of Notice of Intention to Appear at Fairness Hearing Stating Reasons for Opposition to Proposed Settlement Filed | December 15, 2009 |
| Responses to Opposition to Proposed Settlement Filed | January 4, 2010 |
| Final Approval Hearing | _____, 2010 [[TBD by the Court (on or after Jan. 15, 2010)]] |
| Filing of Claim (Consumer Class Members Only) | February 1, 2010 |

The Court's continuance of the final approval hearing and the establishment of deadlines set forth above shall not extend TPP Settlement Class Members' deadlines to opt-out of the Track Two Settlement and Release, or to file claims. The Court's January 7, 2009 Order Revising Certain Dates Related to the Track Two Settlement set March 16, 2009 as the deadline for TPP Settlement Class Members' to opt-out of the Track Two Settlement. Any TPP who did not opt-out of the Track Two Settlement on or before March 16, 2009 are TPP Settlement Class Members whose claims will be released by the Track Two Settlement and Release.

Dated: _____

Patti B. Saris
United States District Judge